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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/735,498

12/14/2000

Vic De Zen

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7590

10/13/2006

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EXAMINER

HORTON, YVONNE MICHELE

ART UNIT

PAPER NUMBER

3635

DATE MAILED: 10/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/735,498

**Applicant(s)**

ZEN, VIC DE

**Examiner**

Yvonne M. Horton

**Art Unit**

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3,5-7,9-14 and 16-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16,20 and 22 is/are allowed.
- 6) ☒ Claim(s) 1-3,5-7,10,11,13,14,17-19 and 21 is/are rejected.
- 7) ☒ Claim(s) 9 and 12 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                               | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                      | 5) <input type="checkbox"/> Notice of Informal Patent Application                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

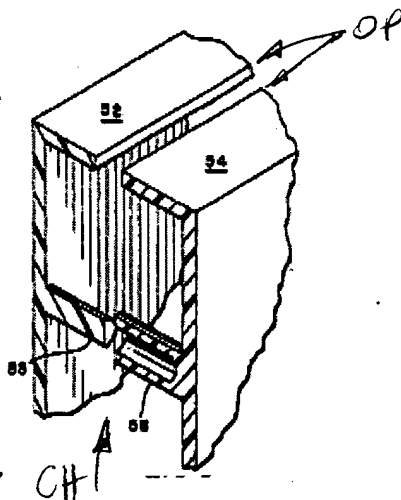
**DETAILED ACTION*****Withdrawal of Allowable Subject Matter***

The indicated allowability of claim 21 is withdrawn in view of the newly discovered reference(s) to HERBST. Rejections based on the newly cited reference(s) follow.

***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-3,7,9,10,13 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent #6,161,363 to HERBST. HERBST discloses the use of a first and second (12,14) one piece integrally molded area circumscribing frame members that fit against one another, at their outer perimeters (OP) to form an area



circumscribing support frame defining an article retaining channel (CH) formed between the first and second (12,14) frame members, wherein the channel (CH) is defined having a bottom wall (55,56) that is defined by the outer perimeters (OP) that fit against

one another, and wherein the channel (CH) opens to the circumscribed area (30). In reference to claims 2 and 3, at least one of the first or second members (12,14) has an integral laterally projecting peripheral wall (52,54) extending around the perimeter thereof against which the other frame member abuts and fits to form the article retaining recess or channel (CH). . In reference to claim 7, each of the frame members (12,14) is adapted to retain a glazing unit (20). Regarding claim 10, the first and second frame members (12,14) are configured to form face-to-face spaced opposing sides of a window frame such that at least one of the fame members (12,14) has the lateral projecting peripheral wall (52,54) which spaces the opposing sides (12,14) to form the retaining channel (CH). In reference to claims 13 and 14, the first and second frame members (12,14) are formed to be brought together face-to-face to form opposite sides of a window sash with the retaining recess (CH) there between, a glazing unit (20) located between said sash sides received in said retaining recess (CH), and means (55,56) securing said molded frame members (12,14) together to interengage and retain said glazing unit (20) there between.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

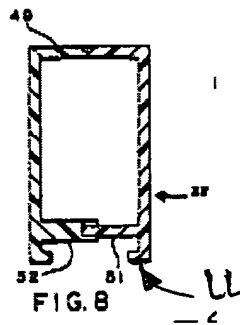
1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 5 and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #6,161,363 to HERBST in view of US Patent #6,922,946 to GERARD. Regarding claims 5 and 17, HERBST discloses the basic claimed structure except for the method of injection molding. Although HERBST is silent in this regard, the applicant is reminded that the manner in which a device is formed does not differentiate the claimed device from a prior art device satisfying the claimed structural limitations. At any rate, GERARD teaches that his frame members (14,16) are injection molded plastic members, column 3, lines 21-25. Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the structure of HERBST using the injection molding process, as taught by GERARD, in order to form a product that is sturdy, weather resistant and able to simulate various colors and textures for aesthetic purposes. In reference to claims 18 and 19, the interengaging means (55,56) resists separation and are comprised of a projecting formation (55) plugged into a mating receptor (56).

Claims 6 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #6,161,363 to HERBST. HERBST discloses the basic claimed structure

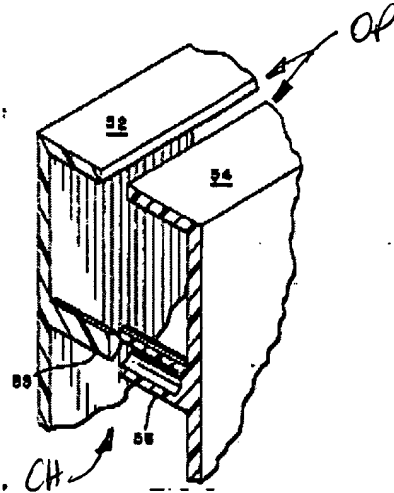
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except for the members being compression molded and except for the specifics of the width of the lateral lips with respect to the spacing between the members. In reference to claim 6, although HERBST is silent in this regard, the applicant is reminded that the manner in which a device is formed does not differentiate the claimed device from a prior art device satisfying the claimed structural limitations. Further, the applicant has shown no criticality for the injection molding process over the compression molding process and as such, the device can be formed via either of these equivalent methods. Regarding claim 11, HERBST discloses the use of lateral lips (LL); however, he is not



specific as to the width of the lips with respect to the spacing between the members. Although HERBST is silent in this regard, it would have been obvious to one having ordinary skill in the art at the time the invention was made to select a lateral lip width suitable for the use intended as an obvious matter of design choice. For instance, if the window was detailed for use in an area that may require the window to give a little, such as in earthquake areas, the width of the lip with regards to the spacing therebetween might be selected so as to allow the window to give during an earthquake eruption.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #6,161,363 to HERBST. HERBST discloses the use of a first and second (12,14) one piece integrally molded area circumscribing frame members that fit against



one another, at their outer perimeters (OP) to form an area circumscribing support frame defining an article retaining channel (CH) formed between the first and second (12,14) frame members, wherein the channel (CH) is defined having a bottom wall (55,56) that is defined by the outer perimeters (OP) that fit against one another, and wherein the channel (CH) opens to the circumscribed area (30). HERBST discloses the basic claimed structure except for indicating that his structure is useable with a sliding window sash. The applicant is reminded that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Hence, there is nothing precluding the structure of HERBST from being used with a sliding sash unit.

***Allowable Subject Matter***

Claims 9 and 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 16,20 and 22 are allowed.

***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.




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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne M. Horton whose telephone number is (571) 272-6845. The examiner can normally be reached on 6:30 am - 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Naoko Slack can be reached on (571) 272-6848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Yvonne M. Horton  
Art Unit 3635

10/10/06

  
JEANETTE E. CHAPMAN  
PRIMARY EXAMINER  
~~GROUP 3400~~